

ATTACHMENT A

MARYLAND DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT SMALL PROCUREMENT CONTRACT

[Insert Contract Name and No.]

THIS CONTRACT (the “Contract”) is made as of the ____ day of _____, 20____ by and between the **DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT** (“Department” or “DHCD”), a principal department of the STATE OF MARYLAND (“State”), and _____ (“Contractor”) whose address in this State is _____ and whose principal address is _____.

IN CONSIDERATION of the promises and the covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Scope of Work.**

1.1. The Contractor agrees to provide the Department with the following services and/or products: The contractor shall for each assigned project and its loan (s) (a) Ensure that the disbursement of loan funds complies with the terms of the contract document and regulatory requirements and that submitted costs are substantiated and within approved budgets. (b) Review/approve initial draw submission in accordance with CDA Multifamily draw procedures; initial draws will tie to overall project budgets and construction phase draw schedules; (c) Review/approve ongoing, construction phase draw submissions; (d) Review/approve close-out packages, including cost certification submissions, final determination of loan proceeds, and Internal Revenue Services (IRS) for 8609s; (e) Prepare Portfolio reporting as assigned; (f) Review financial statements and preliminary capital budgets, as assigned and (g) Attend/conduct meetings, including pre-construction meetings, as necessary to complete assignment and resolve issues.

1.2. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by a contractor in the performance of services similar to the services hereunder. Notwithstanding any review, approval, acceptance or payment for the services by the Department, the Contractor shall be responsible for the professional and technical accuracy of its work, design, drawings, specifications and other materials furnished by the Contractor under this Contract.

2. **Compensation and Method of Payment.**

2.1. **Compensation.** The total compensation for services to be rendered by the Contractor _____

2.2. **Method of Payment; Payment of State Obligations.**

Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor. Charges for late payment of invoices, other than as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable, are prohibited.

2.3. **Contractor's Tax Identification Number.**

The Contractor's Federal Tax Identification Number is _____.
The Contractor's Social Security Number is _____ (individual and sole proprietor contractor only).

2.4. **Invoices.**

All invoices shall be submitted to the Contract Manager: Mr. Brien O'Toole, Maryland Department of Housing & Community Development, 7800 Harkins Road, Lanham, MD 20706. The Contractor agrees to include on the face of all invoices billed to the Department, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and the Federal Employer Identification Number for all other types of organization.

3. **Term.**

3.1. The term of this Contract shall begin upon approval and execution thereof by the Department, provided that it shall also have been executed by the Contractor. The term shall be for six month thereafter unless earlier terminated pursuant to section 4 hereof.

4. **Termination.**

4.1. **Termination for Nonappropriation.**

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this Contract shall be terminated automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or costs incurred after termination.

4.2. **Termination for Default.**

If the Contractor does not fulfill obligations under this Contract or violates any provision of this Contract, the Department may terminate the Contract by giving the Contractor written notice of termination. Termination under this paragraph does not relieve the Contractor from liability for any damages caused to the Department. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

4.3. **Termination for Convenience.**

The Department may terminate this Contract, in whole or in part, without showing cause upon prior written notice to the Contractor specifying the extent and the effective date of the termination. The Department shall pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provision of COMAR 21.07.01.12A (2).

5. **Maryland Law Prevails.**

The law of Maryland shall govern the interpretation and enforcement of this Contract.

6. **Disputes.**

Disputes arising under this Contract shall be governed by State Finance and Procurement Article, Title 15, Subtitle 2, Part III, Annotated Code of Maryland and by COMAR 21.10 Administrative and Civil Remedies. Pending resolution of a dispute, the Contractor shall continue to perform this Contract, as directed by the Procurement Officer.

7. **Changes.**

This Contract may be amended only with the written consent of both parties. Amendments may not change significantly the scope of the Contract. This Contract constitutes the entire agreement between the parties and all other communications prior to its execution, whether written or oral, with reference to the subject matter of this Contract are superseded by this agreement.

8. **Nondiscrimination.**

The Contractor agrees:

A. Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability of a qualified individual with a disability;

B. To include a provision similar to that contained in subsection A, above, in any subcontract except a subcontract for standard commercial supplies or raw materials;

C. To post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause; and

D. To comply with the nondiscrimination provisions of federal and Maryland law.

9. **Commercial Nondiscrimination.**

9.1. As a condition of entering into this Contract, the Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

As part of such compliance, the Contractor may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the Contractor retaliate against any person for reporting instances of such discrimination. The Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The Contractor understands and agrees that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of the Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. The Contractor shall include this clause in all sub-contracts.

9.2. As a condition of entering into this Contract, upon the request of the Maryland Commission on Human Relations, and only after the filing of a complaint against the Contractor under Title 19 of the State Finance and Procurement Article, as amended from time to time, the Contractor agrees to provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the Contractor has used in the past 4 years on any of its contracts that were undertaken within the state of Maryland, including the total dollar amount paid by the Contractor on each subcontract or supply contract. The Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The Contractor understands and agrees that violation of this clause shall be considered a material breach of this Contract and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.

10. **Anti-Bribery.**

The Contractor certifies that, to the Contractor's best knowledge, neither the Contractor; nor (if the Contractor is a corporation or partnership) any of its officers, directors, or partners; nor any employee of the Contractor who is directly involved in obtaining contracts with the Department or with any county, city, or other subdivision of the State, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the United States.

11. **Tax Exemption.**

The Department is generally exempt from federal excise taxes, Maryland sales and use

taxes, District of Columbia sales taxes, and transportation taxes. Exemption certificates shall be completed upon request. Where a contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland sales tax and the exemption does not apply.

12. **Specifications.**

All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in the solicitation (if any).

13. **Delivery and Acceptance.**

Delivery shall be made in accordance with the solicitation (if any) specifications. The Department, in its sole discretion, may extend the time of performance for excusable delays due to unforeseeable causes beyond the Contractor's control. The Department unilaterally may order in writing the suspension, delay, or interruption of performance hereunder. The Department reserves the right to test any materials, equipment, supplies, or services delivered to determine if the specifications have been met. The materials listed in the bid or proposal shall be delivered FOB the point or points specified prior to or on the date specified in the bid or proposal. Any material that is defective or fails to meet the terms of the solicitation (if any) specifications shall be rejected. Rejected materials shall be promptly replaced. The Department reserves the right to purchase replacement materials in the open market. The Contractor failing to promptly replace materials lawfully rejected shall be liable for any excess price paid for the replacement, plus applicable expenses, if any.

14. **Registration.**

Pursuant to Section 7-201 et seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation. The Contractor hereby represents and warrants that it is qualified to do business in the State of Maryland and that it will take such action as from time to time hereafter, may be necessary to remain so qualified.

15. **Intellectual Property.**

The Contractor agrees to indemnify and save harmless the Department, its officers, agents and employees with respect to any claim, action, cost or judgment for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this Contract.

16. **Indemnification.**

The Department shall not assume any obligation to indemnify, hold harmless, or pay

attorneys' fees that may arise from or in any way be associated with the performance or operation of this Contract.

17. **Responsibility for Claims and Liability.**

The Contractor shall be responsible for all damage to life and property due to its activities or those of its agents or employees, in connection with the services required under this Contract. Further, it is expressly understood that the Contractor shall indemnify and save harmless the Department, its officers, agents, and employees from and against all claims, suits, judgments, expenses, actions, damages and costs of every name and description, including attorney's fees, arising out of or resulting from the negligent performance of the services of the Contractor under this Contract.

18. **Drug and Alcohol Free Workplace.**

The Contractor warrants that the Contractor shall comply with COMAR 21.11.08, and that the Contractor shall remain in compliance throughout the term of this Contract.

19. **Non-Hiring of Employees.**

No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall during the pendency and term of this Contract and while serving as an official or employee of the State become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

20. **Contingent Fee Prohibition.**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

21. **Pre-existing Regulations.**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. **Financial Disclosure.**

The Contractor shall comply with provisions of Section 13-221 of the State Finance and Procurement Article, of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies during a

calendar year under which the business and receives in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

23. **Political Contribution Disclosure.**

The Contractor shall comply with Election Law Article, Sections 14-101—14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years and; (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

24. **Retention of Records.**

The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee at all reasonable times.

25. **Compliance with Laws.**

The Contractor hereby represents and warrants that:

A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

D. It shall obtain, at its expense, all licenses, permits, insurance and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

26. **Bankruptcy.**

Upon the filing for any bankruptcy proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the Contractor must notify the Department immediately. Upon learning of the actions herein identified, the Department reserves the right at its sole discretion either to cancel the Contract or to affirm the Contract and hold the Contractor responsible for damages. The exercise of this right is in addition to any other rights the Department may have as provided in this Contract or by law.

27. **Subcontracting or Assignment.**

The benefits and obligations hereunder shall inure to and be binding upon the parties hereto and neither this Contract nor the services to be performed hereunder shall be subcontracted, or assigned or otherwise disposed of, either in whole or in part, except with the prior written consent of the Department. The Department has the right to withhold such consent for any reason the Department deems appropriate.

28. **Notices; Procurement Officer.**

All notices to and communication with the Department regarding this Contract shall be directed to the Procurement Officer listed herein:

Name: Jerome Lofton
Address: 7800 Harkins Road, Room 262
Lanham, Maryland 20706
Telephone: (301) 429-7572
e-mail: Jerome.lofton@maryland.gov

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

WITNESS the signatures of the parties hereto and the dates thereof:

Maryland Department of Housing and
Community Development

Contractor: _____

By: _____
Kenneth Holt
Secretary

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

Approved as to legal form and sufficiency
this _____ day of _____, 20____:

Assistant Attorney General

(Revised 08/2012)